

## Message Text

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DOD/ISA:COL. TERRY (DRAFT)

DOD:OGC(IA):MR. ALMOND (DRAFT)

NAVY:JAG:MAJ. GEHRING (DRAFT)

DOD/ISA:EA&PR:CAPT. SHAID (DRAFT)

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R 092105Z JUL 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO JCS/SECDEF/FMRA WASHDC

JAG NAVY WASHDC

SECAF(ASFIA/SAFGC) WASHDC

CASF(JACI) WASHDC

CINCPAC HONOLULU HI

CINCPACFLT MAKALAPA HI

CINCPACAF HONOLULU HI

CINCPACREP PHIL SUBIC CAY RP

THIRTEENTH AIR FORCE CLARK AFB

C O N F I D E N T I A L STATE 147592

CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, US, RP

SUBJECT: MBA ARTICLE XIII - OFFICIAL DUTY CERTIFICATION

PROCEDURES

REF: STATE 132783

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1. PER PARA 8 REFTTEL FOLLOWING IS DRAFT NOTE REGARDING

OFFICIAL DUTY CERTIFICATION PROCEDURES:

QUOTE THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF FOREIGN AFFAIRS OF THE REPUBLIC OF THE PHILIPPINES AND HAS THE HONOR TO REFER TO PARAGRAPH 1.C. OF ARTICLE XIII OF THE MILITARY BASES AGREEMENT, AS AMENDED, AND TO THE DISCUSSIONS BETWEEN REPRESENTATIVES OF OUR TWO GOVERNMENTS REGARDING PROCEDURES FOR THE RESOLUTION OF QUESTIONS CONCERNING OFFICIAL DUTY STATUS IN INDIVIDUAL CASES. THE EMBASSY WISHES TO PROPOSE THE FOLLOWING PROCEDURES FOR THE RESOLUTION OF SUCH QUESTIONS:

WHEN A MEMBER OF THE U.S. ARMED FORCES IS CHARGED WITH AN OFFENSE BY THE AUTHORITIES OF THE REPUBLIC OF THE PHILIPPINES, THE MILITARY AUTHORITIES OF THE U.S, IF THE CIRCUMSTANCES WARRANT, WILL CERTIFY

THAT THE ALLEGED OFFENSE AROSE OUT OF AN ACT OR OMISSION DONE IN THE PERFORMANCE OF OFFICIAL DUTY. THE DUTY CERTIFICATE WILL BE TRANSMITTED TO THE FISCAL OF THE CITY OR PROVINCE WHERE THE ALLEGED OFFENSE WAS COMMITTED, AND WILL INCLUDE A BRIEF SUMMARY OF THE FACTS UPON WHICH THE DETERMINATION IS BASED. IN THOSE EXCEPTIONAL CASES WHERE THE FISCAL DEEMS IT NECESSARY TO CONDUCT A FURTHER INVESTIGATION OF THESE FACTS, HE WILL GIVE WRITTEN NOTICE TO THAT EFFECT TO THE APPROPRIATE MILITARY AUTHORITIES OF THE U.S. WITHIN TEN DAYS AFTER RECEIPT OF THE CERTIFICATE. IN THE ABSENCE OF SUCH NOTIFICATION FROM THE FISCAL, THE MILITARY AUTHORITIES OF THE U.S. SHALL BE FREE TO EXERCISE JURISDICTION IN THE CASE.

IN CASES WHERE THE FISCAL HAS GIVEN NOTICE AS PROVIDED ABOVE, THE MILITARY AUTHORITIES OF THE U.S. WILL TAKE ALL APPROPRIATE MEASURES TO FACILITATE THE FISCAL'S INVESTIGATION. AT THE FISCAL'S REQUEST HE WILL BE PROVIDED A LIST OF WITNESSES RELIED ON BY THE MILITARY AUTHORITIES IN MAKING THEIR DETERMINATION AND COPIES OF ANY WRITTEN STATEMENTS MADE BY SUCH WITNESSES. IN ADDITION, THE FISCAL MAY, IF HE DEEMS IT NECESSARY, VISIT THE BASE FOR THE PURPOSE OF QUESTIONING WITNESSES WHO ARE RESIDENT OR CONFIDENTIAL

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EMPLOYED ON THE BASE. IN SUCH EVENT THE BASE AUTHORITIES WILL, IF REQUESTED BY THE FISCAL, LOCATE THE WITNESSES AND ARRANGE FOR THEM TO MEET WITH THE FISCAL.

IF, AFTER HAVING CONDUCTED HIS INVESTIGATION, THE FISCAL CONSIDERS THAT DISCUSSION OF THE CERTIFICATE IS REQUIRED, HE SHALL REFER THE MATTER TO THE SECRETARY OF JUSTICE. IF THE SECRETARY OF JUSTICE CONSIDERS THAT DISCUSSION OF

THE CERTIFICATE IS REQUIRED, HE SHALL, WITHIN THIRTY DAYS FROM THE DATE OF ORIGINAL RECEIPT BY THE FISCAL OF THE CERTIFICATE, REFER THE MATTER TO THE JOINT COMMITTEE ESTABLISHED PURSUANT TO PARAGRAPH 19, ARTICLE XIII OF THE MILITARY BASES AGREEMENT. IN THE ABSENCE OF SUCH REFERRAL TO THE JOINT COMMITTEE, THE MILITARY AUTHORITIES OF THE U.S. SHALL BE FREE TO EXERCISE JURISDICTION IN THE CASE.

THE JOINT COMMITTEE SHALL REVIEW EXPEDITIOUSLY ANY CASE REFERRED TO IT, AND SHALL MAKE ITS RECOMMENDATIONS OR REPORT WITHIN TEN DAYS FROM RECEIPT OF THE CASE.

IN ORDER TO ASSURE THAT AN ACCUSED IS NOT DENIED HIS RIGHT TO A PROMPT AND SPEEDY TRIAL, AS PROVIDED IN PARAGRAPH 11.A., ARTICLE XIII OF THE MILITARY BASES AGREEMENT, AND IN THE INTEREST OF THE PROPER AND EFFECTIVE ADMINISTRATION OF JUSTICE, THE AUTHORITIES OF THE U.S. SHALL BE FREE TO EXERCISE JURISDICTION IN ANY CASE REFERRED TO THE JOINT COMMITTEE UNLESS DISCUSSIONS HAVE RESULTED IN AN AGREEMENT TO THE CONTRARY BETWEEN THE TWO GOVERNMENTS WITHIN SIXTY DAYS FROM THE DATE OF THE ORIGINAL RECEIPT BY THE FISCAL OF THE CERTIFICATE. THE ISSUES WHICH HAVE NOT BEEN RESOLVED BY AGREEMENT SHALL CONTINUE TO BE THE SUBJECT OF DISCUSSION WITH A VIEW TOWARDS ACHIEVING RESOLUTION TO BE APPLIED IN FUTURE CASES INVOLVING SIMILAR ISSUES.

IT IS UNDERSTOOD THAT THE SECRETARY OF JUSTICE WILL ISSUE STANDING INSTRUCTIONS TO THE FISCALS SETTING FORTH POLICIES AND PROCEDURES OF THE JUSTICE DEPARTMENT REGARDING THE INVESTIGATION BY FISCALS OF THE FACTS UPON WHICH DUTY CERTIFICATES HAVE BEEN ISSUED BY THE MILITARY AUTHORITIES OF THE U.S. THE JOINT COMMITTEE MAY MAKE RECOMMENDATIONS TO THE SECRETARY OF JUSTICE REGARDING THESE INSTRUCTIONS.  
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IF THE FOREGOING PROCEDURES ARE ACCEPTABLE TO THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, THE EMBASSY PROPOSES THAT THIS NOTE AND THE REPLY OF THE DEPARTMENT TO THAT EFFECT SHALL CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS WHICH SHALL ENTER INTO FORCE ON THE SAME DATE THAT THE RECENT AMENDMENTS TO THE MILITARY BASES AGREEMENT ENTER INTO FORCE. UNQUOTE.

2. EMBASSY WILL NOTE THAT TEXT OF DRAFT NOTE QUOTED ABOVE PRESERVES USE OF TERM "JOINT COMMITTEE." IF NAME OF COMMITTEE IS TO BE CHANGED TO CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE, AS RECOMMENDED PARA 6 REFTTEL, APPROPRIATE CHANGES TO THAT EFFECT WOULD BE REQUIRED IN TEXT OF NOTE.

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